



# MONTANA HISTORICAL SOCIETY REQUEST FOR PROPOSAL (RFP)

RFP Response Due Date and Time:  
February 22, 2008  
2:00 p.m., Local Time

## ISSUING AGENCY INFORMATION

Point of Contact:  
Martha Kohl

Issue Date:  
February 5, 2008

Martha Kohl  
Montana Historical Society  
PO Box 201210  
Helena, MT 59620

Phone: (406) 444-4740  
Fax: (406) 444-2696

## INSTRUCTIONS TO OFFERORS

Return Proposal to:

Martha Kohl  
Montana Historical Society  
PO Box 201210  
Helena, MT 59620

**IMPORTANT: SEE STANDARD TERMS AND CONDITIONS**

## OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:

Authorized Offeror Signatory:

(Please print name and sign in ink)

Offeror Phone Number:

Offeror FAX Number:

Offeror E-mail Address:

**OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE**

## SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

### **1.0 PROJECT OVERVIEW**

The STATE OF MONTANA, MONTANA HISTORICAL SOCIETY (hereinafter referred to as “the State”) is seeking a contractor to provide book fulfillment and distribution for a Montana history textbook, *Montana: Stories of the Land* (hereinafter referred to as “the textbook”). The offeror will be responsible for fulfilling orders from Montana schools and billing and collecting money from those schools to cover shipping and handling costs as well as advertising and selling the textbook to bookstores and other outlets for resale. A more complete description of the supplies and/or services sought for this project is provided in Section 3, Scope of Project. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

### **1.1 CONTRACT TERM**

The contract term is for a period of 3 years beginning July 1, 2008 and ending July 1, 2011. Renewals of the contract, by mutual agreement of both parties, may be made at 1-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of 7 years, at the option of the State.

### **1.2 SINGLE POINT OF CONTACT**

Martha Kohl, Historical Specialist, Montana Historical Society, is the point of contact. Please address any questions about this contract to her at Montana Historical Society, PO Box 201201, Helena MT 59620; [mkohl@mt.gov](mailto:mkohl@mt.gov); 406-444-4740.

### **1.3 REQUIRED REVIEW**

**1.3.1 Review RFP.** Offerors should carefully review the instructions, mandatory requirements, specifications, standard terms and conditions, and contract set out in this RFP and promptly notify Martha Kohl in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the offeror from responding to the RFP or add unnecessary cost. This notification must be accompanied by an explanation and suggested modification and be received by the deadline for receipt of written or e-mailed inquiries set forth below. The State will make any final determination of changes to the RFP.

**1.3.2 Form of Questions.** Offerors with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the procurement officer referenced above on or before **February 10, 2008**. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline may not be considered.

**1.3.3 State's Response.** The State will provide an official written response by **February 15, 2008**, to all questions received by **February 10, 2008**. The State's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. Any formal written addendum will be posted on the State's website alongside the posting of the RFP at <http://montanahistoricalsociety.org/education/default.asp> by the close of business on the date listed.

**1.3.4 Resulting Contract.** This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer, and any clarification question responses shall be included in any resulting contract. The State's contract, attached as Appendix B, contains the contract terms and conditions which will

form the basis of any contract between the State and the highest scoring offeror. In the event of a dispute as to the duties and responsibilities of the parties under this contract, along with any attachments prepared by the State, will govern in the same order of precedence as listed in the contract.

**1.3.5 Understanding of Specifications and Requirements.** By submitting a response to this RFP, the offeror agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

**1.3.6 Prime Contractor/Subcontractors.** The highest scoring offeror will be the prime contractor if a contract is awarded and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if any, must be listed in the proposal. The State reserves the right to approve all subcontractors. The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the State.

**1.3.7 Offeror's Signature.** The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal. The offeror's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

**1.3.8 Offer in Effect for 120 Days.** A proposal may not be modified, withdrawn, or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

## **1.4 SUBMITTING A PROPOSAL**

**1.4.1 Organization of Proposal.** Offerors must submit a signed copy of the RFP cover sheet and, on a separate sheet, the answers to the questions listed below in sections 3 and 4.

**1.4.2 Failure to Comply with Instructions.** Offerors failing to comply with these instructions may be subject to point deductions. The State may also choose to not evaluate, may deem nonresponsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read, or are missing any requested information.

**1.4.3 Multiple Proposals.** Offerors may, at their option, submit multiple proposals, in which case each proposal shall be evaluated as a separate document.

**1.4.4 Copies Required and Deadline for Receipt of Proposals.** Offerors must submit **one original proposal and one copy** to Martha Kohl. The State reserves the right to request an electronic copy of the RFP response. **PROPOSALS MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE** to clearly indicate that they are in response to TEXTBOOK DISTRIBUTION AND FULFILLMENT RFP. ***Proposals must be received at the Montana Historical Society prior to 2:00 p.m., local time, February 22. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of Martha Kohl.***

**1.4.5 Late Proposals.** ***Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.*** It shall be the offeror's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

## **1.5 COST OF PREPARING A PROPOSAL**

**1.5.1 State Not Responsible for Preparation Costs.** The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the offeror. The State is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal or any other costs incurred by the offeror prior to execution of a contract.

**1.5.2 All Timely Submitted Materials Become State Property.** All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and offeror resulting from this RFP process.

## **SECTION 2: RFP STANDARD INFORMATION**

### **2.0 OFFEROR COMPETITION**

The State encourages free and open competition among offerors. Whenever possible, the State will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the State's need to procure technically sound, cost-effective services and supplies.

### **2.1 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION**

**2.1.1 Public Information.** All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of proposals has passed with the following three exceptions: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See section 18-4-304, MCA. The State will make a copier available for interested parties to use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

**2.1.2 Procurement Officer Review of Proposals.** Upon opening the proposals received in response to this RFP, the procurement officer in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.1.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://gsd.mt.gov/procurement/forms.asp> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

## **2.2 CLASSIFICATION AND EVALUATION OF PROPOSALS**

**2.2.1 Initial Classification of Proposals as Responsive or Nonresponsive.** All proposals will initially be classified as either “responsive” or “nonresponsive,” in accordance with ARM 2.5.602. Proposals may be found nonresponsive at any time during the procurement process if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be nonresponsive, it will not be considered further.

**2.2.2 Determination of Responsibility.** The procurement officer will determine whether an offeror has met the standards of responsibility in accordance with ARM 2.5.407. Such a determination may be made at any time during the procurement process if information surfaces that would result in a determination of nonresponsibility. If an offeror is found nonresponsive, the determination must be in writing, made a part of the procurement file, and mailed to the affected offeror.

**2.2.3 Evaluation of Proposals.** An evaluator/evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring offeror or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the State may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

**2.2.4 Completeness of Proposals.** Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

**2.2.5 Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.** After receipt of all proposals and prior to the determination of the award, the State may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of the proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

**2.2.6 Best and Final Offer.** The Best and Final Offer is an option available to the State under the RFP process, which permits the State to request a best and final offer from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their best and final offer, which must include any and all discussed and/or negotiated changes. The State reserves the right to request a best and final offer for this RFP, if any, based on price/cost alone.

**2.2.7 Evaluator/Evaluation Committee Recommendation for Contract Award.** The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring in the evaluator's/evaluation committee's recommendation of the responsive and responsible offeror that achieves the highest score and is, therefore, the most advantageous to the State.

**2.2.8 Request for Documents Notice.** Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will issue a "Request for Documents Notice" to the highest scoring offeror to obtain the required documents/information, such as insurance documents, contract performance security, an electronic copy of any requested material, i.e., RFP response, response to clarification questions, and/or best and final offer, and any other necessary documents. Receipt of the "Request for Documents Notice" does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State's selection.

**2.2.9 Contract Execution.** Upon receipt of all required materials requested in the "Request for Documents Notice," a formal contract will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in the contract. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is fully executed, i.e., when the contract is signed by all parties.

## **2.3 STATE'S RIGHTS RESERVED**

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of Montana to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (section 18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal (ARM 2.5.505);
- Not award if it is in the best interest of the State not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (section 18-4-313, MCA).

## **SECTION 3: SCOPE OF PROJECT**

### **3.0 OVERVIEW**

The State is looking for someone to fulfill school orders for its forthcoming textbook, *Montana: Stories of the Land* and to market and distribute that book to bookstores across Montana. This contract has 2 parts: Fulfillment and Distribution.

#### **Fulfillment**

5,000 copies of the textbook will be shipped to schools. Orders will range in size from 1 copy to 800 copies. The Contractor will be responsible for fulfillment of these orders including:

1. storing the books for the term of the contract.
2. expeditiously processing orders.
3. packing and shipping books.
4. billing the schools for the cost of shipping and handling.
5. returning all remaining books to the Montana Historical Society at the end of the term of the contract at no extra charge.
6. providing quarterly reports of shipping activities
7. keeping these 5,000 books separate from the books being distributed for sale.

The State will provide the names of the recipient, shipping address, and quantity for each order to be fulfilled.

## **Distribution**

1,000-1,500 copies of the textbook will be available for sale through bookstores. Contractor will be responsible for marketing and distributing these copies of the textbook at the Contractor's normal discounts. Tasks will include

1. marketing for the textbook, including listing the book in its catalog, and on appropriate websites (e.g., Amazon, Ingrams, etc.), but excluding any paid advertising.
2. distributing the textbook to retailers and wholesalers.
3. managing returns
4. collecting payment
5. providing monthly reports and payments.

Additional information:

Each book weighs 2.02kg or 4.4533 lbs.

Books are 11x8.5"; With binding the dimensions are 11-1/4x 8-7/8"

Books will be packaged as 8 copies per carton with a Wt. 16.16 Kg

Carton sizes = 12.25" x 18.25" x 6.08"

Pallet sizes = 42.75" x 42.75" x 44.50"

6,500 copies: Weight = 13,645 Kg, CBM = 22.57

There will probably be 19 pallets total.

List price of books will be \$49.95

Dummy book available on request.

Books will arrive at the warehouse from the printer in August. Contractor should expect approximately to have to ship out approximately 3,000 books within three weeks of receipt of shipment.

## **3.1 CONTRACTOR REQUIREMENTS**

- 3.1.1 Warehouse Conditions.** Contractor is required to store the textbook in a safe location that will prevent damage from accidental flooding, mildew, or other unforeseen hazards.

# **SECTION 4: OFFEROR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS**

## **4.0 STATE'S RIGHT TO INVESTIGATE AND REJECT**

The State may make such investigations as deemed necessary to determine the ability of the offeror to provide the supplies and/or perform the services specified. The State reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the State that the offeror is properly qualified to carry out the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

## **4.1 OFFEROR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS**

In order for the State to determine the capabilities of an offeror to provide the supplies and/or perform the services specified in Section 3 above, the offeror must respond to the following requests for information regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

**NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.**

**4.1.1 Ability to Meet Supply Specifications.** Offeror shall provide information as to its ability to meet the specifications detailed above in Section 3. Information shall include answers to the following questions:

**General Abilities.**

- (a) State the number of years in business.
- (b) Describe the system(s) you use to ensure good communication and timely billing procedures with your clients. Please enclose samples or reports.
- (c) Please describe storage facilities.

**Sales Mechanisms.**

- (a) List number of retail accounts in Montana.
- (b) Describe the ways you propose to offer the textbook for sale. Include details about number of catalogs published, frequency, number of sales representatives, etc.

**Reports and Tracking.**

- (a) How often will you provide sales reports for the textbook?
- (b) What will the report include?
- (c) How often will you inventory the textbooks in your stock?
- (d) How will you handle discrepancies in inventory?

**4.1.2 References.** Offeror shall provide a minimum of one reference that are using services of the type proposed in this RFP. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

**4.1.3 Method of Providing Services.**

**Financial Terms: Fulfillment to Montana schools**

- (a) How much will you charge schools for shipping and handling?
- (b) Will you offer volume discounts, and if so, on what schedule?

**Financial Terms: Distribution**

- (a) What is your discount schedule?
- (b) Approximately what percentage of your books do you sell at more than 50% discount?
- (c) What percentage of the receipt of sales will you take for your services?
- (d) What is your return policy?
- (e) How will you handle uncollectible accounts?



- (f) How often will you pay monies due the Montana Historical Society Press?
- (g) Will you insure Montana Historical Society Press's stock in your possession? If so, how?

## **SECTION 6: EVALUATION PROCESS**

### **5.0 BASIS OF EVALUATION**

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on **a total number of 100 points**.

#### **SECTION 4**

#### **EVALUATION CRITERIA**

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### **5.0 Evaluation Procedure**

- 5.0.1** The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.
- 5.0.3** The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek discussion/negotiation or a best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or “best and final offer,” if requested, will not be considered and will have no bearing on any award.

### **5.1 Evaluation Criteria**

Based on a maximum possible value of **100 points**, the evaluation committee will review and evaluate the offers according to the following criteria:

#### **5.1.1 References – Section 3.2.1 – (Pass/Fail)**

If the reference is provided pursuant to the requirement of Section 3.2.1, the proposal will be granted a Pass. References may be contacted for the top scoring offeror as a means to verify an offeror's representations as to work experience and quality of services. Negative references may be grounds for proposal disqualification.

#### **5.1.2 Company Profile/Experience -- Section 4.1.1 – (50 possible points)**

Offeror must provide information responding to each of the questions asked in Section 4.1.1. Information provided will be evaluated to substantiate offeror's qualification and ability to perform the services described.

#### **5.1.3 Method of Providing Services – Section 4.1.3 – (50 possible points)**

Information provided under Section 4.1.3 will be evaluated to determine if offeror has provided a method of providing services that will accomplish the delivery of the services requested at the lowest cost for schools (fulfillment) and at the highest return for the State (distribution).

## APPENDIX A: STANDARD TERMS AND CONDITIONS

### Standard Terms and Conditions

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**AUTHORITY:** The attached bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DEBARMENT:** The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/procurement/preferences.asp>.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or

country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Section 18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Section 18-4-313(4), MCA.)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired. Exceptions will be rejected.

## **APPENDIX B: CONTRACT**

### **PROFESSIONAL BOOK DISTRIBUTION**

\_\_\_\_\_, 2008

#### **1. PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana (Montana Historical Society), (hereinafter referred to as "the State"), whose address and phone number are (225 N. Roberts St.), (406-444-4740) and (insert name of contractor), (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are (insert federal id number), (insert address) and (insert phone number).

#### **THE PARTIES AGREE AS FOLLOWS:**

#### **2. EFFECTIVE DATE, DURATION, AND RENEWAL**

(a) This contract shall take effect on (insert date), 200(  ). The contract shall terminate on (insert date), 200(  ), unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

(b) This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in 1-year intervals, or any interval that is advantageous to the State, for a period not to exceed 7 additional years.

#### **3. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to the State the following: warehousing, order fulfillment, and distribution services. The Contractor agrees to charge schools for shipping and handling at the following rate: (insert agreed upon rate information.)

#### **4. CONSIDERATION/PAYMENT**

In consideration for the book distribution services to be provided, the Contractor will receive \_\_\_\_ percent of the receipt of sales of the Montana Historical Society's publications that it distributes as part of this contract.

#### **5. ACCESS AND RETENTION OF RECORDS**

(a) The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

(b) The Contractor agrees to create and retain records supporting the warehousing, order fulfillment, and distribution services provided for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract

taken by the State of Montana or a third party.

## **6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.)

## **7. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

## **8. INSURANCE**

**General Requirements:** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**Primary Insurance:** The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**Specific Requirements for Commercial General Liability:** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

**Additional Insured Status:** The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insured shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers,

officials, employees, or volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**Certificate of Insurance/Endorsements:** A certificate of insurance, indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **9. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

## **10. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **11. CONTRACT TERMINATION**

(a) The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

(b) The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

## **12. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Martha Kohl will be the liaison for the State.  
PO Box 201201/225. N. Roberts St.  
Helena MT 59620  
406-444-4740  
406-444-2696 (fax)  
mkohl@mt.gov

\_\_\_\_\_ will be the liaison for the Contractor.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Address)  
(City, State, ZIP)  
(Telephone #)  
(Fax #)  
(email)

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

#### 14. **MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

#### 15. **CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

#### 16. **SCOPE, AMENDMENT AND INTERPRETATION**

(a) This contract consists of **(insert number)** numbered pages, any Attachments as required, the TEXTBOOK DISTRIBUTION AND FULFILLMENT RFP as amended and the Contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

(b) These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.



17. **EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

<div></div>	CONTRACTOR'S NAME
	ADDRESS
	CITY, STATE, ZIP
	FEDERAL ID #
BY: <div></div> (Name/Title)	BY: <div></div> (Name/Title)
BY: <div></div> (Signature)	BY: <div></div> (Signature)
DATE: <div></div>	DATE: <div></div>